



South, Central and West
Commissioning Support Unit

Care and Health Information Exchange and Analytics Data Sharing Agreement

Document Control Sheet

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1 Introduction

The Care and Health Information Exchange (CHIE), formerly known as Hampshire Health Record (HHR) is a local health and social care record which brings together information from participating Health and Care organisations. The CHIE record is a copy of health information held by those organisations.

CHIE enables timely access to key information in the health and social care records and medical history of service users, ensuring that clinicians and social care staff who are providing care have a picture of the patients care history, including, but not limited to, medications, allergies, test results and social care information in order to make well informed decisions that are in the best interests of the patient.

The Care and Health Information Analytics service (CHIA), formerly known as Hampshire Health Record Analytics (HHRA) database provides the facility for further detailed analysis of non-identifiable patient and service user information. Health and where available, Social care activity, can then be linked across primary care, secondary care and community care settings, allowing for whole pathway/system analyses to be undertaken.

All records are pseudonymised by removing patient name, NHS Number, address, postcode and date of birth from records. NHS Numbers are encrypted to provide a unique identifier. Access to the CHIA is restricted and all requests for analysis from the HHRA are subject to a detailed approval process.

Parties to this agreement

This Data Sharing Agreement (DSA) dated 2nd February 2018 is between:

Oakley Health Group as Data Controller (the Data Controller)

Hartley Corner Surgery

51 Frogmore Road

Blackwater

GU17 0DD **and**

NHS South, Central and West Commissioning Support Unit as primary Data Processor (the Data Processor)

Building 003 Fort Southwick,

James Callaghan Drive,

Fareham,

PO17 6AR

This agreement covers the flow of information between the named organisations above. Information can only be shared between the parties that are defined in this agreement for use in the CHIE and where agreed in the CHIA database.

1.1 Commencement of agreement

This DSA shall commence on the date of this agreement and shall continue until 23:59 May 24th 2018, unless terminated earlier in accordance with the terms of this DSA by either party.

1.2 Definitions

For the purposes of this specific agreement, the definitions used are as set out in the Data Protection Act (DPA) 1998:

“Data” means information which-

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
- (b) is recorded with the intention that it should be processed by means of such equipment,
- (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system,
- (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record or
- (e) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (d).

A “Data Controller” is a person or organisation who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed. For the purposes of this agreement it is recognised that once data is shared, a Data Controller assumes responsibilities jointly with the other organisations that also share their data into the CHIE and the CHIA. Each Data Controller is entitled to know what data from other sources is combined with their own and the names of the Data Controllers who have agreed to share their data to the CHIE and CHIA.

A “Data Processor” means any person or organisation (other than an employee of the Data Controller) that processes the data on behalf of the Data Controller, in relation to personal data. For the purposes of this agreement, whilst it is recognised that NHS South Central and West Commissioning Support Unit (SCW CSU) are the primary Data Processors, each organisation that has access to data in the CHIE will be further processing the data available to them as part of the shared view of the record.

A ‘Data Subject’ means an identifiable individual who is in receipt of health or social care services and can therefore be regarded as a Patient, Service User or Client and whose data is shared or processed under this agreement.

1.3 Key contacts

The Data Controller	Name of the Organisation	Oakley Health Group
	Name	Dr Neil Bhatia
	Address	Hartley Corner Surgery 51 Frogmore Road Blackwater GU17 0DD
	Telephone Number	01252 872333
The Data Processor (primary)	Name	Bill Baird
	Address	South Central West CSU Building 003 Fort Southwick, James Callaghan Drive, Fareham, PO17 6AR
	Telephone Number	0300 123 1519

2 General Obligations

Parties may sign up to the Hampshire and Isle of Wight Health and Social Information Sharing Framework which specifies a set of general obligations that all parties must meet.

In accordance with the principles of the Data Protection Act 1998 (DPA) and the General Data Protection Regulations (GDPR) (when in effect), the Data Controller undertakes to ensure only the minimum necessary amount of Patient Identifiable Data (PID) is shared, with those with a legitimate right or reasons. The Data Controller confirms that facilities exist in the software used to process the PID to make such restrictions of use according to the clinical or care role of the user.

In accordance with article 8 of the Human Rights Act (HRA) 1998, everyone has the right to respect for his private and family life, his home and his correspondence. Privacy is protected by the agreed role based access and processes to manage users of the system. To meet the condition that a public authority should not interfere with this right, individuals have the right to opt out (see section 7 below) of information sharing via the CHIE and the CHIA database.

The Common Law Duty of Confidentiality is considered when deciding role based access to ensure that professionals are not given more information than is necessary to perform their role.

There are occasions where the relevant legislation provides an express right to share information, providing it does not contravene the Data Protection Act or Human Rights

Act. For example, the sharing of information in order to support the prevention or detection of crime, the capture or prosecution of offenders, or in regards to safeguarding and promoting the welfare of children and vulnerable adults. The Data Processor undertakes to operate these exceptions only where they are legally obliged to share particular information with a named organisation, and at all times in compliance with the DPA and GDPR. Some of the legislation that may be used to support such exceptions is listed below:

- Access to Health Records Act 1990
- Access to Medical Reports 1998
- Children Act 2004
- Common Law Duty of Confidentiality
- Crime and Disorder Act 1998
- Criminal Justice and Police Act 2001
- Data Protection Act 1998
- Data Protection (Processing of Sensitive Personal Data) Order 2000
- Freedom of Information Act 2000
- Human Rights Act 1998
- Mental Health Act 2007
- Mental Capacity Act 2005
- Protection of Children Act 2005
- Special Educational Needs and Disability Act 2001
- Youth Justice and Criminal Evidence Act 1999
- and Common Law duty of confidentiality

Both the Data Controller and the Data Processor are responsible for ensuring that their own organisational and security measures protect the lawful use of information shared under this Agreement.

All organisations processing NHS Patient data have an obligation to provide assurances that they are practising good information governance and use the Information Governance Toolkit to evidence this. It is therefore expected that all parties to this agreement meet the minimum Level 2 requirement of the current version of the NHS Digital Information Governance Toolkit.

All organisations sharing or processing data under this agreement must inform SCW CSU as the Data Processor of any actual or suspected breach of confidentiality or incident involving a risk or breach of the security of information in the CHIE. The Data Processor will then notify the relevant Data Controllers so that the appropriate investigation and reporting can take place.

Patients have the right to be informed about the processing of their data for both

- Their direct care, in identifiable format
- Research and analysis, in non-identifiable (pseudonymised) format

They can opt out if that is their wish. In order to exercise that right, patients are required to be informed, through the use of Fair processing materials. The Data Processor agrees to maintain and supply these materials to the Data Controller. The Data Controller agrees to promote these materials with patients. The supply and promotion of Fair Processing materials ensures that data are informed of their rights and can opt out if they wish to do so.

3 Legal Basis

3.1 Patient Care

The Health and Social Care (Safety and Quality) Act 2015 requires data sharing where it is not constrained by law. The primary purpose of CHIE is to collect and hold personal health information which is made available for use by health and social care professionals to help them provide better care for service users. This information comes from a variety of sources including GP practices, community providers, acute hospitals and social care providers.

Data accessed under this agreement is subject to explicit consent from the Data Subject where this is practical. If a health care professional requires access to a data subject's record and they were unable to obtain consent, they must only access the record where it is of clinical benefit to the patient to do so. This may apply in cases where a data subject is not present or unresponsive or access to their record is required in order to prepare for a consultation with that data subject. Where appropriate, the data subject should be informed that their record has been accessed and the reason why.

In cases where a patient is unconscious, requires emergency treatment or lacks capacity either temporarily or in line with the Mental Capacity Act 2005 and access to the CHIE would benefit the patients care, the users of the CHIE, who are care professionals, will use their judgement about accessing the information.

Patients can opt out of this Direct Care service (see section 2 above). The opt out is effected through the data subject's GP adding an opt out code to the subject's GP record. Where the Data Controller is a GP practice, they agree to respond to patient requests by entering the relevant code in the patient's record. The Data Processor agrees to provide all GP practices with clear information on how to opt patients out of the service for direct care. Opting out of the service for Direct Care will also mean that the data subject's information will not be available for analysis.

3.2 Privacy Impact Assessment (PIA)

The use of Privacy Impact Assessments (PIAs) is embedded within the CHIE and CHIA programme and is regularly reviewed within the Information Governance function of the primary Data Processor. Impacts on individuals' privacy will be considered for any change to the system, including expansion of data shared or accessed by existing or new stakeholders or changed and amended functionality.

4 Secondary Uses

In addition to supporting care purposes, the information supplied by the Data Controller can help in improving the way care is provided by enabling research, informing commissioning planning and decisions, and enable holistic health and social care pathway analysis. CHIA is a physically separate database, which receives some data from CHIE which is combined with data provided by NHS Digital. This is then used for analysing trends in population health in order to identify better ways of treating patients. This type of data processing is often called 'Secondary Processing'.

Prior to the transfer of data from CHIE to CHIA patient identifiers are removed from the data. This includes names, initials, addresses, dates of birth and postcodes. NHS numbers are encrypted in the extract and cannot be read. This process is called

'pseudonymisation'. This subset of data does not include information typed in by hand, so there is no possibility of it containing references to family members or other people. It contains only coded entries for things like allergies and prescribed drugs.

Data in CHIA is used to plan how health and care services will be delivered in future, based on what types of diseases are being recorded and how many people are being referred to hospital etc. Data is also used to help research into new treatments for diseases.

It is not possible to identify any patient by looking at the 'pseudonymised' data on the CHIA database. People who have access to CHIA do not have access to the CHIE. For this reason, it is not regarded as 'personal data' for the purposes of section 8.3 below

Data provided for secondary processing will be linked to other data sources in order to provide the most valuable data resource, but never in a way that renders it possible to identify the patient. The list of data sources that may be linked are listed on the CHIE website.

Data in CHIA is never shared with commercial companies like drug manufacturers.

Data is supplied under the terms of this agreement by the Data Controller to the Data Processor for the secondary uses (as described above) and are subject to the scrutiny and rules established for oversight of secondary uses. If the Data Controller has declined the option to share their data for CHIA purposes then this section 4 will not apply.

Patients can opt out of this analytic service (see section 2 above). The opt out is effected through the data subject's GP adding an opt out code to the subject's GP record. Where the Data Controller is a GP practice, they agree to respond to patient requests by entering the relevant code in the patient's record. The Data Processor agrees to provide all GP practices with clear information on how to opt patients out of the analytic service. Opting out of the analytic service for secondary use will not mean that the data subject's information will not be available for direct care.

5 Approach to Consent

It is recognised that there are legal considerations regarding governance and individual confidentiality with any type of information sharing. The governance controls in place therefore are focussed on ensuring that the sharing of data is carefully monitored, controlled and lawful rather than prevented.

5.1 Fair Processing

In line with the stipulations of;

- Data Protection Act (DPA)
- General Data Protection Regulations (GDPR)
- Principle One of the Caldicott Principles, personal data must be processed fairly and lawfully. This means that data subjects should not be surprised by what information is being shared, why that information is being shared and with whom it is being shared.

The Data Processor can supply materials to inform patients and promote the use of the system to all partner organisations, including the Data Controller in order to meet their

fair processing obligations. The Data Processor assists, and will continue to assist, Data Controllers in meeting their fair processing obligations by:

- 1) Maintaining an open access website at <http://www.hantshealthrecord.nhs.uk/> which describes in detail the use and content of CHIE and CHIA and provides a mechanism by which members of the public can opt out of participating.
- 2) Advertising in local press on a quarterly basis
- 3) Providing fair processing leaflets and posters to Data Controllers for communicating to their patients and service users

The Data Controller undertakes to promote these materials or to make equivalent public statements to patients and care recipients to comply with the DPA and GDPR requirement for fair processing. The fair processing materials will include instructions to patients on how to opt out as set out in section 7 below.

5.2 Audit

The Data Processor undertakes auditing and testing of the Hampshire Health Record which takes place in line with the Security and Confidentiality Protocol for the Hampshire Health Record. This includes penetration testing of the system and the ability to audit access to information held on the Hampshire Health Record, both proactively and reactively. All patients whose records are available on the Hampshire Health Record have the right to request to see their audit trail.

6 Access Control

This section sets out the responsibilities of the parties where users within an organisation will access the CHIE in order to view clinical data. If data is shared by a Data Controller but no access to the CHIE is required then this section 6 will not apply although it is recommended that Data Controllers have awareness of the access controls in place over their data.

The Data Processor agrees to provide, on request, audit trails relating to the actions of any staff using CHIE to assist with disciplinary proceedings or investigations.

If the Data Controller is only providing data to CHIE and does not require to have any end users of the system then this section 6 will not apply to this agreement.

6.1 Access via User Name and Password

User access to the Hampshire Health Record is managed by the primary Data Processor. Each organisation requiring access to the Hampshire Health Record must identify and request access for their user(s), unless they utilise Single Sign-On software (see 6.2).

This process is initiated by the Line Manager of the individual(s) requiring access, who will authorise their request for access and send the relevant completed forms to the Applications Support Team at the SCW CSU.

The Data Processor will send an Acceptable Use Agreement (AUA) which the user must agree to and return in order to be provided with a User Name and Password. The AUA informs users of their responsibilities when viewing information on the CHIE, and they are made aware that they may face disciplinary action by their employer if they misuse this service.

The Data Controller should ensure that they have formal policies in place to deal with such incidents, should they occur, including a mechanism for reporting incidents to the primary Data Processor.

Access to data is based on a user's role. Organisations providing or accessing data are advised to refer to the access control matrix in Appendix 2 of this Data Sharing Agreement.

This matrix has been set up to meet the DPA principle of adequate, relevant and not excessive access to data.

6.2 Single Sign-On (SSO)

SSO is an authentication process that enables users to access the CHIE using the login credentials of their line-of-business system. Where organisations have enabled SSO functionality, the clinical system that they use will log the user directly into the CHIE via SSO, using their primary log-in to identify the user's access rights. Full user and patient auditability is retained when using this functionality.

The SCW CSU, as primary Data Processor, are responsible for providing SSO functionality to participating organisations and enabling the functionality, in agreement with the clinical system supplier of the organisation who will be viewing the data.

Where SSO is in use, the Data Controller is responsible for:

- 1) Ensuring users are aware of the AUA. The Data Processor will make the AUA available to all organisations.
- 2) Implementing best practice such as providing standards for password composition and frequency of change to avoid confidentiality breaches.
- 3) Prohibiting staff from sharing passwords or leaving workstations unlocked when unattended.
- 4) Ensuring the starters and leavers policy restricts access to the clinical system appropriately and thus restricts access to the CHIE.

The organisation accepts full responsibility for the actions of its employees when using *Single Sign-On* and understands that a full audit trail is available detailing all staff members who have accessed patient records.

In the event that the organisation is not using SSO, the responsibilities set out in this section 6.2 will not apply to this agreement.

7 Opt-out

All appropriate and reasonable measures should be taken to inform patients of the Hampshire Health Record and their options to control how their personal confidential data is shared, through the use of Fair Processing materials.

In the case that a patient wishes to opt out, the Data Controller will either:

- 1) Direct the patient to the Data Processor's support team, which can be reached either
 - a. via the website at <http://www.hantshealthrecord.nhs.uk/contact-us>,
 - b. via email at info@hantshealthrecord.nhs.uk,
 - c. on the phone at 0300 123 1519 or

- d. by mail at The Hampshire Health Records, NHS South, Central and West Commissioning Support Unit Building 003 Fort Southwick, James Callaghan Drive, Fareham, PO17 6AR

The Data Processor will then guide them through the process of removing their data from being accessible in the CHIE

- 2) Direct the patient to their GP, who will add a code to their record which prevents the patients data from being processed in accordance with their instructions (see below)

GPs can opt patients out of the CHIE in the following ways:

7.1 Objections to Use of Data for Direct Care

Patients can object to information about them leaving their general practice in identifiable form for purposes INCLUDING their direct care, meaning that confidential information about them will not be shared.

If the clinical code (READ code) is added to the patient's record, this code will be uploaded to the Data Processor. On receipt of this code, the Data Processor will automatically remove all data relating to this patient from view in the CHIE. This includes data from all Data Controllers, not just data provided by the GP practice.

Patients should be made aware that opting out of the Hampshire Health Record may have a detrimental impact on the ability of a health or social care professional to treat a patient in the best possible way and where this is the case, they should be told why. It should also be made clear that the wishes of the patient will be respected, if they decide to opt out.

7.2 Objections to Use of Data for Research and Analysis

If a patient wants clinical staff to be able to see information on the CHIE for their direct care ONLY, but for this not to be transferred to CHIA, the patient's general practitioner can action this. Patients should speak to their GP, who will add a special code to their notes indicating that the patient "Dissents from secondary use of GP patient identifiable data"

When this code is added, the Data Processor will retain the patient's information on the CHIE to be used ONLY for the patient's direct care, but this information will not be extracted, pseudonymised and transferred to CHIA.

8 Information supplied to the Data Processor

This section applies where the Data Controller is supplying data to the Data processor for inclusion in the CHIE for processing by the CHIE. If the Data Controller will not send data to the Data Processor under this agreement, then this section 8 will not apply.

8.1 Data Transfer

Appendix 1 below sets out

- The data to be shared between the parties
- The frequency that the data will be transferred
- The mechanism that the data will be transferred

The information sharing will not cease, unless this agreement is terminated. The information sharing can be terminated by either party on written notice (see section 10

below). The terms of this agreement remain binding on any information shared and retained throughout its lifecycle, irrespective of whether the party remains a current signatory to this agreement. Data will only be viewed by staff in order for them to perform their duties in accordance with one or more of the defined purposes.

Under no circumstances should personal confidential data be processed in any way that is unsecure or left unattended. It is the responsibility of the Data Controller to ensure that the method is secure and that they have the correct contact details for the Data Processor.

8.2 Accuracy of the Data

The accuracy of the data held within the Hampshire Health Record database is the responsibility of the Data Controller. This means that health and care professionals inputting information which is fed into the CHIE are responsible for ensuring that the information is accurate, up-to-date, relevant and not excessive.

The Data Processor is responsible for correctly processing the data received and ensuring it is assigned to the correct patient

If the Data Controller thinks that any information contained within the CHIE is inaccurate or incorrect then the Data Controller should contact the Data Processor, who will discuss the options available to correct the data.

8.3 Retention periods and the disposal of information

Information within the CHIE will be retained for 25 years.

In the event that a patient:

- Dies
- Registers with a GP practice that is not covered by CHIE Opts out

The Data Processor will put all identifiable information relating to them 'beyond use', in line with the recommendations of the ICO for data protection compliance issues. In order to meet the standards for putting information 'beyond use' the Data Processor agrees that:

- they are not able, or will not attempt, to use the personal data to inform any decision in respect of any individual or in a manner that affects the individual in any way;
- they will not give any other organisation access to the personal data;
- they will surround the personal data with appropriate technical and organisational security; and
- they will commit to the permanent deletion of the information if, or when, this becomes possible.

The Data Processor undertakes to comply with these provisions. This section does not apply to data transferred to CHIA, which has been de-identified and is no longer considered personal data for the purposes of retention.

9 Review of agreement

The information sharing and this agreement will be reviewed by a suitably qualified individual or committee/group within each organisation, at a minimum annually, and on an ad hoc basis as and when required to ensure the agreement remains fit for purpose and that the information sharing is continuing to effectively achieve its objectives. This agreement will remain in force irrespective of whether the agreement has been officially reviewed until a notice of termination is served.

The Data Controller and the Data Processor agree that the terms of this agreement will be discussed within the Care and Health Information Analytics Information Governance Group (CHIAGG) (formerly known as Hampshire Health Record Information Governance Group [HHRIGG]). The Data Controller agrees to supply a suitably qualified professional to attend that group and make decisions on behalf of the Data Controller.

In the case of Data Controllers who are GP practices, the Data Controller agrees to be represented on the HHRIGG by the Wessex Local Medical Committee (LMC) or their delegate.

In this forum, the benefits, risks and operating procedures for the Data Processor will be discussed and agreed and reviews of the relevant documentation will be commissioned upon instruction for the above group. Changes impacting the operation of CHIE and CHIA will be agreed through a Privacy Impact Assessment (PIA) process outlined in the Terms of Reference for this group.

10 Termination and variation

Any Party may leave this Agreement by giving thirty calendar (30) days' notice in writing to the other Parties.

Any proposed changes to the Parties involved in this Agreement, to the purposes of the information sharing, the nature or type of information shared or manner in which the information is to be processed and any other suggested changes to the terms of this Agreement must be notified immediately to the Information Compliance/Governance leads so that the impact of the proposed changes can be assessed.

No variation of the Agreement shall be effective unless the agreement is amended and it is signed by all Parties.

10.1 Dispute resolution

In the event of a dispute arising under this Agreement, authorised representatives of the Parties will discuss and meet as appropriate to try to resolve the dispute within seven calendar (7) days of being requested in writing by any Party to do so. If the dispute remains unsolved, it will then be referred to a senior manager from each of the Parties who will use all reasonable endeavours to resolve the dispute within a further fourteen calendar (14) days.

In the event of failure to resolve the dispute through the steps set out above the Parties agree to attempt to settle it by mediation.


11 Agreements

As Data Controller, I agree:	Mark all that apply:	If NO , the following sections contained within this document do not apply:
To share the information set out in Appendix 1 below for the purposes of Direct Patient Care, which will be made available by the Data Processor for other participating organisations to view	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Section 7 Section 8
To share the information set out in Appendix 1 below for secondary use purposes within CHIA and agree that the data shared for the CHIE is used for this purpose, subject to the appropriate pseudonymisation and usage controls	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Section 4


As Data Controller, I will:	Mark all that apply:	If NO , the following sections contained within this document do not apply:
Employ users of CHIE within my organisation	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Section 6
Employ users of CHIE who will access CHIE through 'Single Sign On' (SSO) functionality	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Section 6.2

12 Signatures

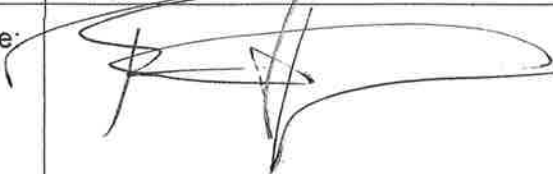
Signed for and on behalf of the **Data Controller of J82049**, Oakley Health Group

Name:	Dr Neil Bhatia
Position:	Partner, Caldicott Guardian, Information Governance Lead
Signature:	

Additional signatories if required

Name:	Dr Mark Hinton
Position:	Senior Partner
Signature:	

Signed on Behalf of the **Data Processor**

Name:	Peter Cambouropoulos
Position:	Programme Manager
Signature:	

Appendix 2: Access Control Matrix



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